

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Jacques Jugeat, Inc.

:
:
: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Corporation :
Franchise Tax under Article 9A of the Tax Law for :
the Years 1976 - 1978.

State of New York
County of Albany

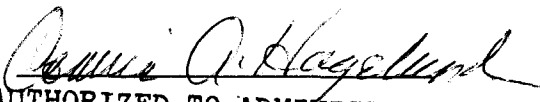
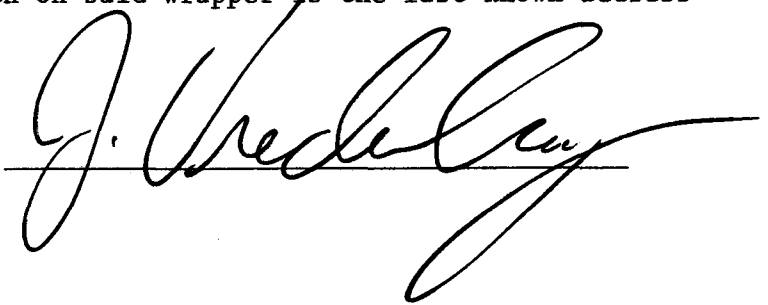
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 14th day of December, 1982, he served the within notice of Decision by certified mail upon Jacques Jugeat, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jacques Jugeat, Inc.
225 Fifth Ave.
New York, NY 10010

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
14th day of December, 1982.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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of

Jacques Jugeat, Inc.

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AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
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Franchise Tax under Article 9A of the Tax Law for :
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State of New York
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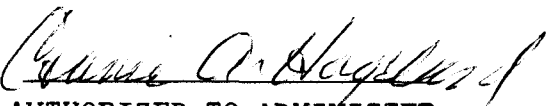
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 14th day of December, 1982, he served the within notice of Decision by certified mail upon Kenneth N. Sacks the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Kenneth N. Sacks
Gibney, Anthony & Flaherty
420 Lexington Ave.
New York, NY 10170

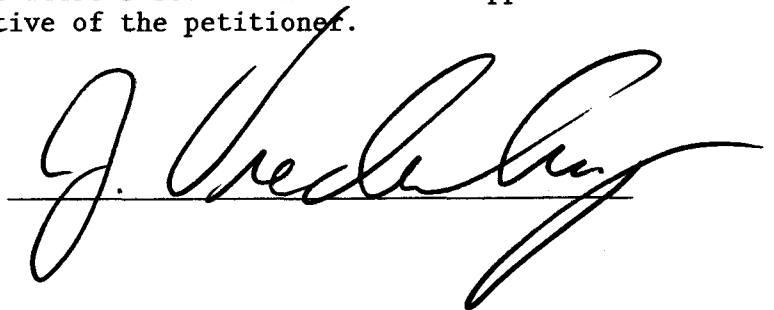
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
14th day of December, 1982.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

December 14, 1982

Jacques Jugeat, Inc.
225 Fifth Ave.
New York, NY 10010

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Kenneth N. Sacks
Gibney, Anthony & Flaherty
420 Lexington Ave.
New York, NY 10170
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JACQUES JUGEAT, INC.	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Franchise Tax on Business Corporations :		
under Article 9-A of the Tax Law for the Years	:	
1976, 1977 and 1978.	:	

Petitioner, Jacques Jugeat, Inc., 225 Fifth Avenue, New York, New York 10010, filed a petition for redetermination of a deficiency or for refund of franchise tax on business corporations under Article 9-A of the Tax Law for the years 1976, 1977 and 1978 (File No. 32906).

A formal hearing was held before Doris E. Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 24, 1982 at 1:30 P.M. Petitioner appeared by Gibney, Anthony & Flaherty, Esqs. (Kenneth N. Sacks, Esq. and James H. McGivney, Esq., of counsel). The Audit Division appeared by Paul B. Coburn, Esq. (Barry M. Bresler, Esq., of counsel).

ISSUES

I. Whether petitioner maintained a regular place of business outside New York during the years at issue so as to be entitled to allocate its business income.

II. If petitioner is not so entitled, whether section 210.3(a)(4) of the Tax Law and the regulations promulgated thereunder as applied to petitioner, tax in an unreasonable and arbitrary manner in violation of petitioner's due process rights under the Fourteenth Amendment, and create a multiple tax burden

upon petitioner in violation of the Interstate Commerce Clause of the United States Constitution.

FINDINGS OF FACT

1. On March 16, 1981, the Audit Division issued to petitioner, Jacques Jugeat, Inc., three notices of deficiency, asserting additional franchise taxes due under Article 9-A of the Tax Law for the years 1976, 1977 and 1978 in the respective amounts of \$61,270.00, \$50,320.00 and \$3,787.00, plus interest. At the formal hearing petitioner, by its representative, conceded the correctness of the deficiency for 1978. The foundation for the remaining deficiencies was the Audit Division's disallowance of petitioner's allocation of its business income.

2. Petitioner is a corporation organized and existing under the laws of this state, engaged in the business of selling china and glassware, principally to retailers. Petitioner maintains an office and showroom (occupying approximately 3,000 square feet) at 225 Fifth Avenue, and an office and warehouse at 114 West 26th Street, New York City. In addition, since 1971, petitioner has leased showroom and office space (occupying approximately 2,100 square feet) at the Merchandise Mart in Chicago. The door to this space bears petitioner's firm name.

3. Before petitioner leased space at the Merchandise Mart, its midwest market was served by Mr. Ed Ahmer, a Jacques Jugeat, Inc. independent sales representative. Mr. Ahmer made his sales while "on the road" and at twice yearly trade shows held in Chicago. As the market expanded, it became clear to petitioner that it required a place where its merchandise could be presented throughout the year. Mr. Jacques Jugeat, then president of petitioner, and

Mr. Lloyd Glasgow, current president Jacques Jugeat, Inc., planned and negotiated the lease with the director of leasing of the Merchandise Mart.

4. The first lease (for rooms 14-105 and 14-107) was entered into between Jacques Jugeat, Inc. and the Merchandise Mart on February 1, 1971. Subsequent leases for rooms 14-105, 14-107 and 14-109 were for the periods October 1, 1972 through September 30, 1977 and October 1, 1977 through September 30, 1982. The annual base rent for the premises was \$12,050.00 for the period October 1, 1972 through January 31, 1974; \$12,660.00 for the period February 1, 1974 through September 30, 1977; and \$14,770.00 for October 1, 1977 through September 30, 1982. Jacques Jugeat, Inc. was also obligated to pay, and did pay, rent escalations amounting to its proportionate share of increases in operating expenses. Rent and additional rent invoices were forwarded to Jacques Jugeat, Inc. in New York for payment.

5. Petitioner expended approximately \$35,000.00 in 1972 and 1973 for leasehold improvements. It was also obligated under the leases to pay for any and all repairs.

6. Once the leasehold improvements were completed, Mr. Ahmer began to man the premises for Jacques Jugeat, Inc. However, shortly after the new showroom opened, Mr. Ahmer died. Petitioner thereafter engaged Kenneth Roselli to manage its showroom. Mr. Roselli maintained his own business premises, for Ken Roselli, Ltd., in room 14-111 of the Merchandise Mart, next to petitioner's showroom.

7. For those periods when Mr. Roselli was next door doing business, he assigned one of his employees to be on the Jacques Jugeat, Inc. premises full time; thus, there was always one person on the premises doing Jacques Jugeat, Inc. business. Mr. Roselli's employee was, of course, paid by Ken Roselli,

Ltd. Mr. Roselli received from Jacques Jugeat, Inc. a commission, less the monthly rental for petitioner's showroom; he was thus remunerated on an equal basis with petitioner's other sales representatives who were not provided by petitioner with office space.

8. During the years under consideration, Mr. Roselli made use of a small portion of the Jacques Jugeat, Inc. showroom for his merchandise. He was required to secure petitioner's approval prior to displaying other lines in petitioner's showroom. This arrangement compensated Mr. Roselli, to some extent, for the commission adjustment made.

9. Ken Roselli, Ltd. can be found in the Chicago telephone directory under that name. Jacques Jugeat, Inc. can also be found in the Chicago directory under its own name, with its own telephone number.

10. Jacques Jugeat, Inc. uses stationery and envelopes which bear its Chicago address.

11. During 1976 and 1977, Mr. Jugeat, Mr. Glasgow and Mr. Robert Borst, petitioner's sales manager, used the Chicago offices for a cumulative period of approximately nine weeks, attending trade shows and working with special customers or on special projects. Petitioner also required its Kansas City sales representative, Mr. Norman Kaplan, to be in attendance at the Chicago showroom during the twice yearly trade shows.

12. On May 6, 1977, the Merchandise Mart sent a proposed new lease to Mr. Glasgow in New York. In acknowledging receipt of the new lease forms on May 16, 1977, Mr. Glasgow complained by letter about the failure of other showrooms on the floor to remain open at all times during business hours (as required by the standard leases granted by the Merchandise Mart). When Mr. Roselli

complained to the Merchandise Mart management of the same problem by letter of May 6, 1977, he did so on his own business stationery.

13. Jacques Jugeat, Inc. and Ken Roselli, Ltd. each retained separate memberships in the same business club in the Merchandise Mart, the Merchants and Manufacturers Club.

14. In general, Jacques Jugeat, Inc. keeps approximately \$40,000.00 worth of goods in its Chicago showroom. After examining the samples, a customer places an order, which is sent to New York for acceptance and fulfillment. In the case of discontinued stock, sales thereof are made in the Chicago showroom; the customer either pays at the time of his purchase or is later billed by petitioner.

15. For the years 1976 and 1977, petitioner filed corporation income tax returns with the State of Illinois, reflecting base income (federal taxable income with modifications), base income allocable to Illinois and tax as follows:

	<u>1976</u>	<u>1977</u>
Base income	\$1,099,071	\$762,730
Base income allocable to Illinois	75,069	52,345
Tax	3,000	3,000

CONCLUSIONS OF LAW

A. That during the years at issue, Tax Law section 210.3(a)(4) required that any corporation, which did not maintain a regular place of business outside New York, allocate all its business income and capital to this state. The regulations extant during the period in question defined a regular place of business, in relevant part, as "any bona fide office (other than a statutory office), factory, warehouse or other space which is regularly used by the

taxpayer in carrying on its business." 20 NYCRR 4-2.2(b), repealed April 1, 1981.

B. That the showroom and office leased and maintained by Jacques Jugeat, Inc. in Illinois constituted a regular place of business of petitioner outside this state, entitling it to allocate its income. Petitioner holds itself out as conducting its business of selling china and glassware in Illinois. Moreover, petitioner's position vis-a-vis New York is consistent with its position vis-a-vis Illinois: petitioner filed its New York franchise tax report, allocating income to Illinois and paid tax to Illinois upon income allocated thereto. (See Matter of Cameo Die & Label Co., Inc., State Tax Commission, October 20, 1972, wherein the corporate taxpayer attempted for New York franchise tax purposes to allocate income to California but did not file a tax return in California.)

Matter of Byford Imports, Inc. (August 18, 1972), in which this Commission decided that the office leased and furnished by the taxpayer which was used and occupied by an independent sales agent was not a regular place of business of the taxpayer since it was actually the place of business of the sales agent, does not dispose of the matter at hand. The showroom and office leased by Jacques Jugeat, Inc. was not the place of business of Mr. Roselli. To determine otherwise would require a finding that Mr. Roselli had two places of business in Chicago while petitioner had none. Considering the full panoply of petitioner's activities concerning its Chicago premises (e.g., erection of leasehold improvements, use of the premises by petitioner's officers and sales therefrom of discontinued items), as well as the common sense proposition that if one person needs two places of business, he certainly doesn't need them

right next door to each other, it is clear that Jacques Jugeat, Inc.'s Chicago leased premises constituted its own place of business.

C. That in view of the foregoing, the second issue is rendered moot.

D. That the petition of Jacques Jugeat, Inc. is hereby granted to the extent indicated in Conclusion of Law "B"; that the notices of deficiency issued on March 16, 1981 for the years 1976 and 1977 are cancelled; and that the Notice of Deficiency issued on March 16, 1981 for the year 1978 is sustained in full.

DATED: Albany, New York

DEC 14 1982

STATE TAX COMMISSION

ACTING PRESIDENT

COMMISSIONER

COMMISSIONER